

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

M2 CONSULTING, INC.

Plaintiff,

v.

C.A. No. 03-12589-GAO

MRO SOFTWARE, INC.

Defendant.

**MRO SOFTWARE, INC.’S MOTION TO MODIFY SCHEDULING ORDER**

Defendant MRO Software, Inc. (“MRO”) hereby submits this Motion to Modify the Scheduling Order in this matter. Pursuant to Local Rule 7.1, MRO’s attorney has repeatedly attempted to confer with counsel for M2 Consulting, Inc. (“M2”) concerning this Motion, however, M2’s attorney has refused to respond.

Fact discovery in this matter is scheduled to conclude on January 31, 2005 (the parties reached an informal agreement on this date although the existing Scheduling Order provides a deadline of December 31, 2004). This case has evolved significantly since the Court’s Scheduling Order was entered. On January 19, 2005, the Court granted M2 leave to file an Amended Complaint which sets forth six new causes of action, numerous new factual allegations and adds a new defendant to this case. In addition, MRO intends to file a Motion for Leave to Amend its Counterclaims in this action to add new legal and factual claims against M2. To date, the parties have taken no depositions in this case and are currently attempting to resolve a number of discovery disputes.

Accordingly, the Court should extend the deadline for the conclusion of fact discovery and modify the other Scheduling Order deadlines as necessary.

### **Argument**

Pursuant to a scheduling conference held on July 7, 2004, the Court entered a Scheduling Order (the “Scheduling Order”) in this matter. Under the Scheduling Order, fact discovery was scheduled to be concluded by December 31, 2004. However, MRO and M2 reached an informal agreement to extend the deadline for the completion of fact discovery, to January 31, 2005. For the below stated reasons, the Court should modify its Scheduling Order as proposed herein.

On January 19, 2005, the Court allowed M2’s Motion for Leave to File an Amended Complaint (the “Motion to Amend”) in this action. With its Amended Complaint (the “Amended Complaint”), M2 has made dramatic changes to its factual and legal allegations in this case. M2’s Amended Complaint sets forth six new causes of action, numerous new factual allegations and adds a new defendant, Craig Newfield, general counsel to MRO. The allegations with regard to Mr. Newfield concern his alleged actions relating to out-of-state entities and are the basis of some of M2’s new causes of action against MRO. Thus, the court should modify the discovery schedule to provide sufficient time for the parties to complete fact discovery in this matter.

Moreover, recent discovery received from M2 (including a DVD containing over 39,000 emails), has revealed that M2 has continued to offer MRO’s software product for sale (and has entered into numerous agreements with new customers), *following* termination of the distribution agreement between MRO and M2. MRO is presently

preparing a First Amended Answer and Counterclaim, and anticipates filing it before the end of January 2005.

The defendants are entitled to a reasonable period of time with which to conduct and complete discovery into M2's new claims and causes of action, as well as into MRO's new claims. As an initial matter, a new defendant has been named in M2's Amended Complaint and is entitled to propound discovery requests. Further, MRO is entitled to inquire into the new legal and factual allegations against it and M2. In its Motion to Amend, M2 recognizes that a scheduling extension is appropriate, stating that it "is willing to agree to any reasonable extension of the discovery deadline in the event that the Defendants are unable to complete discovery prior to its current expiration date . . ." (Motion to Amend, par. 8.)

In order to allow adequate discovery into the new legal and factual claims raised in M2's Amended Complaint and into the new claims which MRO is preparing, MRO proposes a modification to the discovery schedule as follows:

- Change the existing January 31, 2005 deadline (which had been informally agreed to by the parties) for the completion of fact discovery, to June 30, 2005;
- Move the deadline for M2's expert report from March 31, 2005 to July 15, 2005;
- Modify the deadline for MRO's expert report from April 29, 2005 to August 31, 2005;
- Change the deadline for the completion of all expert witness depositions from June 30, 2005 to September 30, 2005; and
- Amend the date of the Status Conference from July 14, 2005 to anytime after October 1, 2005, at the convenience of the court.

As an additional ground for this Motion, the parties have not taken any depositions in this action and are presently attempting to resolve several discovery disputes.

For the reasons set forth above, this Motion should be allowed and the Scheduling Order should be modified as proposed herein.

MRO SOFTWARE, INC.,

By its attorneys,

/s/ Kurt Bratten

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Dated: January 25, 2005

**Local Rule 7.1 Certification**

Counsel for MRO Software, Inc. hereby certifies that, pursuant to Rule 7.1(A)(2) of the Local Federal Rules of Civil Procedure, he has made repeated efforts, from January 20, 2005 to present, for the purpose of (1) conferring with counsel for M2 Consulting, Inc. regarding the attached Motion, and (2) attempting in good faith to resolve or narrow the issues presented herein. Despite these efforts, counsel to M2 Consulting, Inc. has failed to respond.

/s/ Kurt Bratten

Kurt Bratten